

TSBPME Case No. 05-204

IN THE MATTER OF  
JAMES J. NAPLES, D.P.M.

AGREED ORDER

LICENSE No. 0508

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BEFORE THE TEXAS STATE  
BOARD OF PODIATRIC  
MEDICAL EXAMINERS

SITTING IN AUSTIN,

TRAVIS COUNTY, TEXAS

AGREED ORDER

BE IT REMEMBERED that on the date approved and entered below came to be considered the allegations against James J. Naples, DPM. By letter dated July 19, 2005 the staff of the Texas State Board of Podiatric Medical Examiners (the "Board") gave preliminary notice to Dr. Naples of its intent to investigate complaints, concerns or reports filed against him. Dr. Naples was duly notified of the allegations against him. Dr. Naples has cooperated with the staff of the Board and was given the opportunity to present information in rebuttal.

By his signature on this Order, and upon acceptance and entry of this Order by the Board, Dr. Naples does hereby waive his right to an administrative hearing before the State Office of Administrative Hearings, and judicial review of this Order. Dr. Naples understands that he has the option, before signing this Agreed Order, to participate in a contested case hearing under the *Administrative Procedure Act*.

The Board and Dr. Naples, in order to avoid the expense, delay and uncertainty of a hearing, have agreed to the entry of an Order dispensing with the need for further action in this matter. Dr. Naples agrees to this Order for the purpose of resolving this proceeding only. The Board makes the following Findings of Fact and Conclusions of Law and enters this Order:

FINDINGS OF FACT

1. Dr. Naples is licensed as a podiatric physician in the State of Texas (License Number 0508) to practice podiatric medicine and is therefore subject to the jurisdiction of the Board, the Podiatric Medical Practice Act of Texas and the rules of the Board.
2. Dr. Naples was provided with Notice of Violation and given the opportunity to respond to the Notice and to show compliance with the law.
3. On April 26, 2005, regarding Case No. 5:04CR00025-001 adjudicated in the United States District Court, for the Eastern of Texas (Texarkana, TX), Dr. Naples plead guilty to 1 felony count of "Conspiracy to Obstruct Justice" (18 U.S.C. §371).
4. On April 26, 2005, Dr. Naples was convicted of 1 felony count of "Conspiracy to Obstruct Justice."

CONCLUSIONS OF LAW

1. Dr. Naples is required to follow the provisions of the Podiatric Medical Practice Act, Texas Occupations Code, §202.001, et seq., and the associated rules of the Board, 22

Texas Administrative Code § 371.1, et seq..

2. Texas Occupations Code, §202.253(a)(5) provides that, "the board may refuse to issue a license to practice podiatry to a person, for directly or indirectly violating or attempting to violate this chapter or a rule adopted under this chapter as a principal, accessory, or accomplice."
3. Texas Occupations Code, §202.501(a) provides that, "the Board shall revoke or suspend a license; place on probation a person whose license has been suspended, or reprimand a license holder for violating the law regulating the practice of podiatry or a rule adopted by the board."
4. Texas Occupations Code, §202.5015 provides that a license holder who engages in conduct described by Section 202.253 violates this chapter.
5. 22 Texas Administrative Code, §376.1(a)(1) provides that, "any podiatric physician who violates any provision of these rules, or any provision of the Act shall be at the discretion of the Board subject to the following penalties: cancellation, suspension, revocation, or probated cancellation, revocation, or suspension of the license to practice podiatric medicine."
6. The Findings Of Fact numbers 1 through 4 establish that Dr. Naples violated: Texas Occupations Code, §202.253(a)(2)(A) in that he: was convicted of a felony.

### ORDER

1. Dr. Naples' license to practice podiatric medicine is hereby Suspended for a term of 14 months, commencing on the day after the Order is entered by the Board. The last 11 months of the Suspension shall be probated.
2. Dr. Naples shall pay a fine of \$75,000.00 (Seventy-Five Thousand Dollars and no/100) fully due and payable within 90 (ninety) days after the effective date of this Agreed Order.
3. Dr. Naples takes notice that Texas Occupations Code §202.001(a)(4) defines "Podiatry" as: "the treatment of or offer to treat any disease, disorder, physical injury, deformity, or ailment of the human foot by any system or method. The term includes podiatric medicine."
4. Dr. Naples takes notice that 22 Texas Administrative Code §375.1(2) defines the "Foot" as: "the tibia and fibula in their articulation with the talus, and all bones to the toes, inclusive of all soft tissues (muscles, nerves, vascular structures, tendons, ligaments and any other anatomical structures) that insert into the tibia and fibula in their articulation with the talus and all bones to the toes."
5. Dr. Naples takes notice that 22 Texas Administrative Code §375.2(a) provides: "The health and safety of patients shall be the first consideration of the podiatric physician. The principal objective of the podiatric medical profession is to render service to humanity. A podiatric physician shall continually strive to improve his medical knowledge and skill for the benefit of his patients and colleagues. The podiatric physician shall administer to patients in a professional manner and to the best of his ability. Secrets and personal information entrusted to him shall be held inviolate unless disclosure is necessary to protect the welfare of the individual or the community. A podiatric physician shall be temperate in all things in recognition that

his knowledge and skill are essential to public health, welfare, and human life.”

6. Dr. Naples shall comply with the terms of his 2-year federal criminal probation as required by the United States District Court for the Eastern District of Texas. Upon compliance, Dr. Naples shall present documentation to the Board indicating the successful completion of his criminal probation terms.
7. Dr. Naples shall complete an additional four (4) hours of Continuing Medical Education in addition to the thirty (30) hours already required by law. The four (4) hours shall consist of ethics or practice/risk management courses; offered by the American Podiatric Medical Association, the American Medical Association or their state components. The total 34 hours of CME are due by November 30, 2008 for the November 1, 2006 – October 31, 2008 biennium.
8. Dr. Naples shall abide by all federal or state laws and rules regulating Podiatric Medicine in the State of Texas.

**During the 3-Month Suspension period:**

9. Dr. Naples’ podiatric practice is to remain closed for the purposes of receiving, diagnosing, treating, or consulting with patients, and Dr. Naples may not participate for income in any professional activity that is directly related to the diagnosis or treatment of a patient. Dr. Naples may refer his patients to another practitioner for treatment or consultation during the term of the temporary voluntary suspension, but Dr. Naples shall not derive any income from such referrals.
10. Dr. Naples may keep his office open for the purposes of arranging referrals, handling mail, processing accounts, billing, and insurance matters, and other similar matters if not directly related to the diagnosis and treatment of patients. Dr. Naples shall not offer and shall not accept to consult with, diagnose or treat a patient.
11. If Dr. Naples shares office space with a podiatrist, the other podiatrist shall be allowed to continue his/her practice normally, but Dr. Naples shall not consult regarding the diagnosis or treatment of patients and shall not share income with the other practitioner, including any income derived in any way from the diagnosis or treatment of patients.
12. Dr. Naples shall permit a Board representative or staff member to periodically enter his place of business and/or the facility at which he previously maintained an office, announced or unannounced, during the hours of 8:00 a.m. to 5:00 p.m. on any weekday that is not a federal holiday to ensure compliance with this Order, and to ensure proper medical records are maintained, including applicable prescription records.
13. The terms of this **Agreed Order**, if accepted by the Board, become effective upon approval of the Board.

14. If Dr. Naples fully complies with the terms of the **Agreed Order**, the Board agrees not to bring any further disciplinary action regarding the facts that are the subject of this Order.

### GENERAL PROVISIONS

1. Effective Date. This **Agreed Order** shall take effect and become binding upon the approval by the Board.
2. No Waiver. No waiver of any of the terms of this **Agreed Order** shall be valid unless in writing. No waiver of default of any terms of the **Agreed Order** shall be deemed a waiver of any subsequent breach or default of the same or similar nature.
3. Governing Law. This **Agreed Order** is entered into pursuant to and shall be construed in accordance with the laws of the State of Texas including *Tex. Occup. Code Ann.*, §202.001 et seq., *the Podiatric Medical Practice Act*; and *Tex. Gov't Code Ann.*, §2001.001 et seq., *the Administrative Procedure Act*.
4. Acknowledgment of Entire Agreement. Dr. Naples acknowledges that he has carefully read this instrument, including all documents or exhibits, if any, that are referred to, that this instrument expresses the entire agreement between the parties concerning the subjects it purports to cover, and Dr. Naples has executed this instrument freely and of his own accord.
5. Notice. Any notice to be given under the terms of this **Agreed Order** by either party to this order shall be in writing and shall be delivered by personal delivery or certified mail, return receipt requested, to the following addresses:

James J. Naples, DPM  
C/O Keith Strama, Attorney  
McGinnis, Lochridge & Kilgore, L.L.P.  
1300 Capitol Center  
919 Congress Avenue  
Austin, Texas 78701

Texas State Board of Podiatric Medical Examiners  
P.O. Box 12216  
Austin, TX 78711-2216

6. Upon approval of this **Agreed Order** by the Board, the Presiding Officer and the Executive Director are authorized to sign the Order on the Board's behalf.

I, JAMES J. NAPLES, DPM, HAVE READ AND UNDERSTAND THE FOREGOING ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE THE RIGHT TO A HEARING BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS AND TO JUDICIAL REVIEW OF THE AGREED ORDER. I SIGN IT VOLUNTARILY. I UNDERSTAND THE AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, ORAL, WRITTEN OR OTHERWISE.

  
James J. Naples, DPM

2/4/2006  
Date

IN THE STATE OF TEXAS

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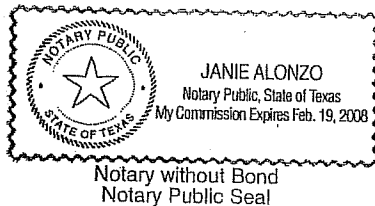
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COUNTY OF Travis

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BEFORE ME, on this day personally appeared James J. Naples known to me, who first, being duly sworn, signed the foregoing **Agreed Order** in my presence.

SIGNED on this the 4<sup>th</sup> day of February, 2006.



Janie Alonzo  
(Printed Name of Notary Public)  
Janie Alonzo  
Notary Public, in and for the State of Texas

**APPROVED AND ENTERED** by the Texas State Board of Podiatric Medical Examiners on this the 6<sup>th</sup> day of February, 2006, after a Board vote.

Brendford Glass DPM  
Brendford Glass, D.P.M.  
Board President

Hemant Makan  
Hemant Makan  
Executive Director

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS**United States District Court**

EASTERN DISTRICT OF TEXAS

Texarkana

APR 27 2005

BY DAVID J. MALAND, CLERK  
DEPUTY Shoore

UNITED STATES OF AMERICA

V.

JAMES NAPLES

**JUDGMENT IN A CRIMINAL CASE**

Case Number: 5:04CR00025-001

USM Number: 10242-078

David Botsford  
Defendant's Attorney**THE DEFENDANT:**☒ pleaded guilty to count(s) 1 of the information☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 371	Conspiracy to Obstruct Justice	02/28/2004	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.☐ The defendant has been found not guilty on count(s) \_\_\_\_\_☒ Count(s) in indictment ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

4/26/2005

Date of Imposition of Judgment

David Folsom

Signature of Judge

David Folsom

United States District Judge

Name and Title of Judge

April 26, 2005

Date

DEFENDANT: JAMES NAPLES  
CASE NUMBER: 5:04CR00025-001

### PROBATION

The defendant is hereby sentenced to probation for a term of : 2 years

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as determined by the court.

- ☒ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of probation that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: JAMES NAPLES  
CASE NUMBER: 5:04CR00025-001

### **SPECIAL CONDITIONS OF SUPERVISION**

The defendant shall not submit or cause to be submitted to any federal health care program any claim or request for payment for items of service, including administrative and management services, furnished, ordered, or prescribed by the defendant.

The defendant shall not associate on a professional basis with Frederick Day, Glenn Feeback, Philip Hahn, Gregg Petty, Linda Velvin, John White, or Nicholas Bachynsky. Any Contact with any of these people by the defendant should be reported to the probation officer.

The defendant shall perform 250 hours of community service as directed by the probation officer.

The defendant is allowed to travel in the continental United States but, it is required that defendant obtain permission from the probation officer to travel outside the United States.



AO 245B (Rev. 12/03) Judgment in a Criminal Case  
Sheet 5 — Criminal Monetary PenaltiesJudgment — Page 4 of 7DEFENDANT: JAMES NAPLES  
CASE NUMBER: 5:04CR00025-001**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$ 0.00	\$ 2,000,000.00

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Department of Health and Human Service	\$2,000,000.00	\$2,000,000.00	0%

TOTALS	\$	<u>2,000,000.00</u>	\$	<u>2,000,000.00</u>
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☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JAMES NAPLES  
CASE NUMBER: 5:04CR00025-001**SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 2,000,100.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the U.S. District Court, Fine & Restitution Section, P.O. Box 570, Tyler, TX 75710.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

AO 245B (Rev. 12/03) Judgment in a Criminal Case  
Attachment (Page 1) — Statement of Reasons

DEFENDANT: JAMES NAPLES  
CASE NUMBER: 5:04CR00025-001  
DISTRICT: EASTERN DISTRICT OF TEXAS

**STATEMENT OF REASONS**

(Not for Public Disclosure)

☐ THE COURT ADOPTS THE PRESENTENCE REPORT AND GUIDELINE APPLICATIONS WITHOUT CHANGE.

OR

☒ THE COURT ADOPTS THE PRESENTENCE REPORT AND GUIDELINE APPLICATIONS BUT WITH THESE CHANGES: (Use Page 3, if necessary.)

☒ Chapter Two of the U.S.S.G. Manual determinations by court (including changes to base offense level or specific offense characteristics):

☒ Chapter Three of the U.S.S.G. Manual adjustment determinations by court (including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple counts, or acceptance of responsibility):

☐ Chapter Four of the U.S.S.G. Manual determinations by court (including changes to criminal history category or scores, career offender, or criminal livelihood determinations):

☐ THE COURT ADOPTS THE PRESENTENCE REPORT WITH THESE COMMENTS OR FINDINGS (including comments or factual findings concerning certain information in the presentence report that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions. Specify court comments or findings, including paragraphs in the presentence report.) (Use Page 3, if necessary.)

**GUIDELINE RANGE DETERMINED BY THE COURT (BEFORE DEPARTURES):**

Total Offense Level: 18  
Criminal History Category: 1  
Imprisonment Range: 27 to 33 months  
Supervised Release Range: 2 to 3 years  
Fine Range: \$ 6,000.00 to \$ 60,000.00

☒ Fine waived or below the guideline range because of inability to pay.

☐ THE SENTENCE IS WITHIN THE GUIDELINE RANGE, THAT RANGE DOES NOT EXCEED 24 MONTHS, AND THE COURT FINDS NO REASON TO DEPART.

OR

☐ THE SENTENCE IS WITHIN A GUIDELINE RANGE, THAT RANGE EXCEEDS 24 MONTHS, AND THE SPECIFIC SENTENCE IS IMPOSED FOR THESE REASONS: (Use Page 3, if necessary.)

AO 245B (Rev. 12/03) Judgment in a Criminal Case

Judgment—Page 7 of 7

DEFENDANT: JAMES NAPLES  
CASE NUMBER: 5:04CR00025-001

**Continuation page**

The Court found that the two-level adjustment to the base offense level pursuant to USSG § 2J1.2(b)(3)(c) was not applicable.

AO 245B (Rev. 12/03) Judgment in a Criminal Case

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Judgment—Page 8 of 7

DEFENDANT: JAMES NAPLES  
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**Continuation page**

The Court granted the defendant a three level reduction for acceptance of responsibility.